Combating Money Laundering and Financing of Terrorism; *One for All, All for One.*

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Introduction

The Phenomena of Money Laundering and Financing of Terrorism

Until a few years ago no one had heard of money laundering. This does not mean that what today is known as money laundering did not exist at the time. It did exist; because whenever crime generated substantial cash proceeds, the criminal needed to deflect attention from himself as the possible offender and therefore he could not suddenly go around dispensing largesse and spending money for which he could not provide a plausible, lawful explanation. He needed to conceal the origin of his wealth and to give apparent legitimacy to it. In other words he needed to launder his money to make it look clean.

Terrorist acts, especially those having the capability of inflicting mass destruction as that of September 11 2001, in New York, 2002 in Bali, 2003 in Casablanca, March 11 2004 in Spain and that of July 7 2005, in London and the recently uncovered plans in the UK[246], need to be financed. The techniques to finance terrorism have to date been found not to be very different from the techniques to launder criminal proceeds. The perspective is different. In money laundering, the techniques used are intended to conceal the origin of funds of a criminal source. In the financing of terrorism the same techniques are used to conceal the destination of what could very well be funds of lawful origin.

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Evolution of Measures to Combat Money Laundering and Financing of Terrorism

The initial analysis of the phenomenon of money laundering revealed that the money launderer made extensive use of the confidentiality and speed of the financial system (and of banks in particular) by depositing considerable amounts of cash which are then wired all around the globe in seconds until all traces of their original illicit source are buried under an intricate web of layers upon layers of complex transactions. As a result - to start with - the measures which were recommended to combat money laundering, targeted banks and non-banking financial institutions.

As these measures took hold however, the danger grew that the money launderer would move away from banks and non-bank financial institutions into other non-financial businesses which could equally serve his purpose such as real estate, dealings in precious metals, antiques, and casinos. Consequently, as shown by the second EU directive, the trend today is to ensure that anti-money laundering measures cover also these businesses as well as persons, who have come to be known as gatekeepers, whose services the money launder seeks to utilise such as accountants, auditors, lawyers, notaries, company formation agents, etc.

Globalization

Globalization is today the buzz word: not only for trade and the economy, but also for crime and therefore, necessarily, for law enforcement. International co-operation has become indispensable. Crime generates financial assets. Financial assets, however, are also needed to generate the kind of cross-border crime to which the modern world is a witness. Cross-border crime requires a cross-border response.

One for all, all for One

As a result of the cross-border nature of modern crime - in particular of money laundering and terrorist finance - whatever the

measures that may be put in place domestically, it is today generally acknowledged that money laundering and terrorist finance cannot be fought effectively unless each State is at the service of all other States and all States are at the service of each State; *one for all and all for one*. There is no other way. The techniques used for money laundering and terrorist finance are transnational in nature where the delinquent makes use of a plurality of jurisdictions to confound the law enforcement agencies in order to frustrate their attempts to trace the trail of the funds and in that way not only embargo or recover the funds but also identify the beneficiary of the funds and therefore the individual or group of individuals who unlawfully generated those funds or to whom the funds were destined. Each State therefore needs the co-operation of other states in order to succeed in its efforts to trace the various destinations travelled by the laundered funds in transit around the globe. Likewise, each State must be ready to co-operate with other States not only for the sake of reciprocity but also in its own interest not to expose itself to the destabilisation impact on its financial system which the infiltration of criminal assets brings along with it.

I. Anti-Money Laundering Tools

Today the phrase money laundering has almost become a household word. Over these last years, what started as skirmishes against money laundering has developed into a global assault. As a closer analysis contributed to a greater understanding of the phenomenon, this gave rise to a sharpened insight into the nature of the new tools needed to fight it. Among these there are Cash Transaction Reporting, Suspicious Transaction Reporting, Customer Identification and Record Keeping.

Cash reporting, Suspicious Transaction Reporting, Customer Identification and Record Keeping

The above tools are today well known and established. Cash reporting and/or suspicious transaction reporting are today the means which are used by persons or entities bound by the anti-

money laundering regime to trigger the necessary inquiries, investigations and eventual prosecution of suspected money launderers. The relevant report is made to the domestic disclosure receiving agency which is universally known as the *financial intelligence unit* which evaluates the report in the context of its own intelligence resources and decides whether or not further police investigations are justified.

Customer identification and record keeping are meant to ensure that a paper trail of the transaction is maintained so as to ensure the viability of any eventual investigations. It is not of much use to report a cash or suspicious transaction, if the investigating authorities are then confronted with a situation where they are deprived of any means to confirm or exclude the suspicion.

Besides the above internationally established measures, states have also tended to develop and design their own specific measures in consonance with their own legal system to give the investigating and prosecution authorities that arsenal of measures necessary to deprive the offender of the fruit of his criminal endeavour. In Malta these are the investigation, attachment and freezing orders meant to preserve the suspected tainted assets with a view to their confiscation following a successful prosecution.

Financial Intelligence Units

Among the most effective tools that have been developed over the years in order to enable the public authorities to timely detect and investigate suspected money laundering activities, is the financial intelligence unit. This is a specialised unit which embraces within it the required multidisciplinary expertise with a focus on financial dealings to analyse speedily and knowledgeably complex financial transactions. Financial intelligence units have mushroomed prodigiously and at a fast rate worldwide, and the setting up of such a unit on the national level has itself become an international standard.

The financial intelligence unit is today almost universally acknowledged as an indispensable tool to combat money laundering effectively. With a disclosure obligation, an appropriate disclosure receiving agency had to be identified. With growing awareness of the complexity of the devices which were resorted to by criminals in their efforts to launder their proceeds, often with the help of specialised and professional money launderers, the conviction also grew that only a specialised disclosure agency with the necessary financial expertise and access to domestic and international financial intelligence could hope to untangle the web of complex transactions skilfully put in place. A specialised unit would not only be in a better position to analyse transactions. It would also at the same time be in a position to identify methodologies and trends which would help it to propose to interested institutions, indicators and other aids which would help those institutions put in place proper procedures and enhance their capacity to identify money laundering operations. In that way they would be able to respond more effectively to their reporting obligations.

A better understanding of the appropriate features which these disclosure agencies should have was gained in the course of time. Today, it is generally accepted that for the disclosure agency to be effective it should be:

(i) A central, national agency;

(ii) Should be responsible for receiving, requesting, analysing and disseminating to competent authorities disclosures of financial information

(iii) Concerning suspected proceeds of crime as required by national legislation or regulation,
(iv) With the purpose of combating money laundering.

This is essentially the original definition given by the EGMONT Group of a financial intelligence unit (FIU). The EGMONT Group was formed in 1995 and it informally brings together the disclosure

receiving agencies from all over the world. In response to the 11 September events and the insight obtained on the link between money laundering and the financing of terrorism the EGMONT Group has revised its definition of an FIU in order to extend its remit also to combating the financing of terrorism.

Malta could not fail to set up its own FIU and a law setting up the Financial Intelligence Analysis Unit (FIAU) was enacted in 2001. A Board of governors was appointed and the unit is today fully operational and kept busy evaluating suspicious transaction reports made to it by the subject persons which according to law fall under its remit. It has established itself well not only on the domestic front, but also among the international fraternity of financial intelligence units which quietly and without fuss are daily exchanging intelligence to help each other in their mission of preventing and detecting money laundering. In line with international standards, domestic legislation has continued to expand the scope of the FIAU's operations and consequently the FIAU's remit has today been broadened to include financing of terrorism and as a result has been aligned with the new EGMONT definition of an FIU. It is therefore inevitable that the FIAU will also have to expand logistically by increasing its staff complement and office space in order to discharge effectively its new responsibilities

Again, the legal provisions setting up the FIAU are an eloquent acknowledgement of the fact that fighting money laundering and now also financing of terrorism, must at all times remain a collective, global effort. In fact the FIAU is not merely the designated disclosure receiving agency but the law also provides for extensive possibilities of co-operation and exchange of information between the Maltese FIAU and foreign units having similar powers and functions. This is all a perfect implementation of the requirements of the European Council Directive on co-operation between FIU's of October, 2000 (which requirements were kept in mind when the law was being drafted).

II. International Standard Setters

The Financial Action Task Force (FATF)

It was not co-incidental, therefore, that it was as a result of a joint co-operative initiative of a number of states, collectively known as the G7, that the anti-money laundering effort took on a new lease of life with the birth of the *Financial Action Task Force* or FATF which today numbers amongst its members some 31 countries, the European Commission and the Gulf Cooperation Council which represents its members consisting of 6 Arab States of the Gulf. China and the Republic of Korea have observer status while an increasing number of so called FATF-Style regional bodies (i.e bodies having the same mission as FATF to combat money laundering and adopt the same methodologies as FATF) also attend FATF plenaries as observers. These, together, seek to develop international standards to be followed by states in their joint mission to combat money laundering and continue to give guidance to states on ways and means by which money laundering operations can be identified and countered. In 1990 the FATF produced the now-famous 40 recommendations which have gradually assumed the character of an international manifesto against money-laundering with a fully fledged programme of action proposing[247]

- To criminalise money laundering,
- To lay down rules providing for customer identification, record keeping and reporting obligations,
- The lifting of bank secrecy,
- The taking of provisional measures pending investigation,
- The confiscation of the proceeds of money laundering,
- International co-operation,
- Other measures.

[247] These recommendations were revised and expanded in 1996 and again in 2003.

The FATF also pioneered a ground breaking method to harness the resources of the international community in order to ensure, through peer pressure and a process of mutual evaluation, that the anti-money laundering regime of individual states be brought up to scratch. The process proved effective and produced results and really made out of the anti-money laundering effort a co-ordinated and collective enterprise with clear goals and definite benchmarks to be pursued.

Moreover, in October 2001, following the infamous and tragic events of September 11, the FATF quickly and urgently came together in an effort to cut off funds to terrorist activities. It soon emerged that the methods used to conceal the criminal destination of terrorist funds were often similar to those used to conceal the criminal origin of unlawful proceeds and therefore 8 special recommendations on terrorist financing were added to the 40 FATF recommendations. Subsequently, another special recommendation requiring states to have measures in place to detect the cross-border transportation of currency and bearer negotiable instruments was added so that today we have 9 such special recommendations.

Other Regional FATF Style Bodies

But FATF alone could not continue the mutual evaluation process widely enough and quickly enough with the urgency and scope that the extent of transnational crime required. The collective effort had to be enhanced by enrolling the help of other organisational resources. Regional groupings were therefore formed. Today we have the CFATF (the Caribbean FATF), the APG (the Asia/Pacific Group on Money Laundering), the Eurasia Group (EAG), the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), we have GAFISUD (the South America grouping), there is also GIABA (the Intergovernmental Group of [West African States] on Anti-Money Laundering in Africa), the Middle East and North Africa Financial Action Task Force (MENAFATF) and there could be others I may have missed. That, however, is certainly an already quite impressive list of organisations and groupings. I listed them to illustrate the global reach which the

anti-money laundering network has today: a network having the mission to help states all over the world to improve their respective anti-money laundering systems.

One regional group I have kept for last is a group of which I am particularly proud and this is not because I have been its Chairman for two consecutive terms, although, of course, there is just the slightest of possibilities that that might have something to do with it. This is:

The Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV/MONEYVAL)

The Select Committee of Experts on the Evaluation of Anti Money Laundering Measures which used to be known by its acronym PC-R-EV but which today is better known as MONEYVAL. The Committee was set up by the Committee of Ministers of the Council of Europe in September 1997 with the primary purpose of conducting self and mutual evaluations of the anti-money laundering systems in Council of Europe states which are not members of the FATF using international standards as a benchmark. Malta was a founding member of the committee.

The evaluation process has proved to be a very effective peer pressure exercise which produces substantial and concrete results. The process involves an element of self-assessment where states are required to reply to questionnaires which seek to focus the attention of state authorities on all aspects which together make up a viable anti-money laundering system. It also entails a very demanding mutual evaluation procedure where a team of legal, financial and law enforcement experts from countries members of MONEYVAL visits another member country and has several hectic face to face meetings with the authorities and institutions of the country to be evaluated and which have a role in the drawing up of legislation, in the supervision of financial and other relevant institutions, and in the investigation, prosecution and adjudication of money laundering offences. The local authorities are subjected to detailed and probing questioning in an effort to obtain a clear

picture of the anti-money laundering situation in the country so that the team will be in a position to draw up conclusions and make recommendations on ways and means to improve the overall regime.

The evaluation team then draws up its report with its recommendations. The country evaluated has an opportunity to rebut or comment on the report which is then exhaustively debated in plenary which approves the report subject to any amendments that may be made.

Members of the Maltese delegation to MONEYVAL have taken part in several such evaluations as part of the evaluation team. The on-site visits are no picnic and they entail a lot of preparation before the visit itself, a lot of alertness and attention to detail during the visit, and long hours of deliberation and perspiration in the drawing up of the final report.

MONEYVAL has also introduced a report-back procedure where the evaluated country will, one year after the report, inform the plenary on the progress registered since the drawing up of the report. Most member countries have reported remarkable progress in implementing the advice given and the recommendations made in the report which they have often found invaluable as assistance to help them improve their anti-money laundering effort.

The first round of evaluations started in April 1998 and was concluded in December 2000. In a relatively brief span of slightly more than two years no less than 22 countries were evaluated and as many comprehensive and very detailed reports drawn up.

The international standards against which countries were evaluated in the first round were those laid down in the following documents:

- The 40 FATF Recommendations;

- The 1988 UN Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances;

- The 1991 European Communities Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering (91/308/EEC);

- The 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (hereafter "the Strasbourg Convention").

A second round of evaluations was concluded at the end of 2003 and Malta was among the first to be evaluated in that round. Yet, a third round of evaluations is under way and the visit to Malta by the MONEYVAL delegation has already taken place. The relative report is due to be discussed in plenary in October this year (2006). Malta has always had overall positive reports. For the third round a new comprehensive Anti-Money Laundering/Financing Terrorism Methodology is being used. It is very specific and detailed, but perhaps too mechanical, in an effort to be as objective as possible and cover all existing international standards.

Additional standards have to be taken up as these emerge in the course of time and as the understanding of the money laundering phenomenon grows. New standards are continuously being developed in response to changing trends and patterns as criminals seek to evade the measures which states put up to frustrate the laundering of their proceeds.

MONEYVAL, for its second round of evaluations, took on board *the Non-Cooperative Countries and Territories criteria* (or as they are known the NCCT criteria) which were adopted by FATF in an exercise to identify what were referred to as 'un-cooperative jurisdictions'.

Moreover, in December 2001 the European Union came out with its *second anti-money laundering directive* which, among other things and in line with emerging international standards, extended the scope of application of existing anti-money laundering measures by widening the spectrum of persons and professionals

who were obliged to apply those measures. Among other things, the directive required member states to ensure that the anti-money laundering obligations are extended to:

- Auditors, external accountants and tax advisors;
- Notaries and other independent legal professionals when acting as financial intermediaries;
- Dealers in high-value goods, such as precious stones or metals, or works of art, auctioneers, whenever payment is made in cash, and in an amount of EUR 15,000 or more; and
- Casinos.

EU member states had till the 15th of June, 2003 to bring into force those laws, regulations and administrative provisions necessary to comply with the Directive. Maltese legislation has fully implemented the requirements of this directive.

In addition to this, MONEYVAL took on board the FATF 8+1 *Special Recommendations on Terrorist Financing* aimed at the detection, prevention and suppression of the financing of terrorism and terrorist acts. Since the financing of terrorism and money laundering are closely linked, MONEYVAL has had its terms of reference extended to financing of terrorism as well. It has already carried out a first self-assessment exercise of its member countries in this respect on the basis of a questionnaire prepared by FATF, and monitoring compliance with anti-terrorist financing standards has become a regular feature of the mutual evaluations carried out by MONEYVAL.

In line with these developments, MONEYVAL has extended its list of reference documents and benchmark standards against which the anti-money laundering and anti-terrorist finance regimes of member states are assessed during evaluation rounds.

In October 2005 a third EU Anti-Money Laundering Directive has been adopted and this directive consolidates the two previous ones and regulates more comprehensively and in greater detail the subject matter in conformity with existing international standards.

Moreover, in the same year the Council of Europe opened for signature the 2005 Convention on Laundering, Search and Confiscation of the Proceeds of Crime and on the Financing of Terrorism which is intended to supersede the 1990 Convention. The 2005 Convention took on board the development in international standards since the adoption of the 1990 Convention, extended the scope of the original 1990 Convention to terrorist financing and, besides other innovative features, for the first time in an international instrument, contains extensive provisions creating a systematic legal framework for the role and functions of FIUs in the prevention and detection of money laundering.

The International Monetary Fund

The International Monetary Fund (IMF) was created in 1945 to help promote the health of the world economy and has its headquarters in Washington DC. It is governed by and is accountable to the governments of the 184 countries that make up its near-global membership.

In April 2001 the IMF reached the conclusion that money laundering posed a threat to the integrity of the financial system and following the September 11 events, in October 2002 it started a programme of assessments of anti-money laundering and combating of financing of terrorism measures in member states. Its assessments are based on a comprehensive AML/CFT methodology which it developed in agreement with FATF.

The EGMONT Group

This group was informally set up in 1995 so as to provide a forum for FIUs to discuss FIU issues, stimulate co-operation between them, and exchange information, training and expertise. Before an FIU could be admitted as a member of the group it had to satisfy the elements of the definition of an FIU as set down by the EGMONT Group. The network has expanded rapidly and today has 101 FIUs worldwide among its members. Being an informal grouping, the group did not have a formal governing body or a

permanent secretariat. The prodigious growth of the group, however, is starting to raise questions whether its present informal set-up is sustainable any longer and whether the time has come to set up the group on a more formal basis with a permanent secretariat.

Among the documents elaborated by EGMONT there are the Statement of Purpose laying down the objectives of the group, a document on Principles of Information Exchange by which FIUs members of EGMONT are to be guided, the Definition of an FIU with an Interpretative Note which constitutes the EGMONT definition with which FIUs wishing to secure membership must comply and an Interpretative Note on the Countering of Terrorist Finance on account of the extension of the definition of an FIU to include the combating of terrorist finance. Other documents which address different aspects of the role of an FIU have also been prepared such as an EGMONT information paper on FIUs and the EGMONT group, a paper on Best Practices for the exchange of information between FIUs, and a paper on 100 Sanitized Cases which illustrate a number of successes of FIUs members of EGMONT and lessons which can be learned by all. The EGMONT Group is today the acknowledged international standard setter where it comes to FIU issues and has very quickly managed to construct a formidable network of financial intelligence units which can exchange information and developments very fast over the internet via the EGMONT Secure Web.

All for One, One for All

And this brings me back full circle. The fight against money laundering and financing of terrorism must necessarily be a collective effort where all are at the service of one while the one is at the service of all. It is of the utmost importance that law enforcement authorities and auxiliary agencies share between themselves any information on potential money laundering and terrorist finance so as to be able to allow appropriate and effective action in good time. It is equally important that persons and entities subject to anti-money laundering and financing of terrorism

regimes should be on the alert to, and share among themselves, any trends or techniques which they may uncover in the course of their business activities so as to protect one another not only from falling foul of the law but also in order to secure the good health and stability of their enterprises.

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